

PATENT**Application # 09/923,078****Attorney Docket # 1999-0748-CON-1 (1014-216)****REMARKS**

The Examiner is respectfully thanked for the consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Each of claims 1-3, 6, 9, 10, 12-20, 23, 25, and 28-42 has been amended for reasons unrelated to patentability, including at least one of: correct an informality, to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 1-42 are now pending in this application. Each of claims 1, 19, 34 are in independent form.

I. The Anticipation Rejections

Each of claims 1-4, 6, and 9 was rejected as anticipated under 35 U.S.C. 102(e). In support of the rejection, various portions of Tillman (U.S. Patent No. 6,496,980) were applied. These rejections are respectfully traversed.

As explained below, Tillman fails to establish a *prima facie* case of anticipation. See MPEP 2131. To anticipate expressly, the "invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim". *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must

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describe the claimed subject matter “with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention”. *Crown Operations Int’l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (CCPA 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003) (“A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.”) The USPTO “has the initial duty of supplying the factual basis for its rejection.” *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967).

Inherency “requires that the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art.” *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002).

A. Claim Construction Generally

On 12 July 2005, the Federal Circuit, in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (*en banc*) (*cert. denied*), clarified that:

1. “[t]he Patent and Trademark Office (‘PTO’) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘**in light of the specification as it would be interpreted by one of ordinary skill in the art**’” (*Id.* at 1316);
2. the words of a claim “are generally given their ordinary and customary meaning” (*Id.* at 1312);
3. the ordinary and customary meaning of a claim term is “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the

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- invention, i.e., as of the effective filing date of the patent application” (*Id.* at 1313);
4. “the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but **in the context of the entire patent**, including the specification” (*Id.*);
 5. even “the context in which a term is used in the asserted claim can be highly instructive” (*Id.* at 1314);
 6. “the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, **the inventor’s lexicography governs**” (*Id.* at 1316);
 7. even “when guidance is not provided in explicit definitional format, **the specification may define claim terms by implication** such that the meaning may be found in or ascertained by a reading of the patent documents” (*Id.* at 1321);
 8. an “invention is construed not only in the light of the claims, but also with reference to the file wrapper or prosecution history in the Patent Office” (*Id.* at 1317 (*citing Graham v. John Deere Co.*, 383 U.S. 1, 33 (1966))); and
 9. the “prosecution history... consists of the complete record of the proceedings before the PTO and **includes the prior art cited** during the examination of the patent” (*Id.* at 1317).

B. Construing “data sink”

In the present Application, the customary meaning for the phrase “data sink” is implicitly defined in the specification and the cited art. That definition must control examination of those claims that recite this phrase.

At least at page 13, lines 15-17, the specification of the present Application defines the term “data sink” by stating that the “data sink receives the content from upstream and writes it

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to the store 204, while also making the content available to the data source 214 for immediate delivery to the client.”

Thus, the phrase “data sink” should be construed as one of ordinary skill in the relevant art would interpret the definition provided in the specification.

C. Claim 1

Inter alia, claim 1, from which claims each of claims 2-4, 6, and 9 depend, recites, “a replay portal directly connected to a backbone network and directly connected to said access network”. Tillman does not teach or suggest, expressly or inherently, “a replay portal directly connected to a backbone network and directly connected to said access network”.

Inter alia, claim 1, from which claims each of claims 2-4, 6, and 9 depend, recite, “the replay portal stores a plurality of video programs for a predetermined period of time to permit customers to view selected programs upon demand”. Tillman does not teach or suggest, expressly or inherently, “the replay portal stores a plurality of video programs for a predetermined period of time to permit customers to view selected programs upon demand”.

The present Office Action erroneously asserts, at Page 2, that:

[c]onsidering claim 1, Tillman discloses ... wherein the network stores plurality of **video programs** for a predetermined period of time to permit customers to view selected programs upon demand (column 13, line 61 - column 14, line 4).

Yet the relied upon portion of Tillman recites, at column 13, line 61 - column 14, line 4:

[t]he elements of system 400 perform their conventional functions well-known in the art. In particular, data storage device 422 may be used to provide long-term storage for the **executable instructions** and data structures for embodiments of methods of providing high quality replay on demand for streaming digital video

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in accordance with the present invention, whereas memory 406 is used to store on a shorter term basis the **executable instructions** of embodiments of the methods for providing high quality replay on demand for streaming digital video in accordance with the present invention during execution by processor 402.

Applicant respectfully asks, in this relied upon passage, where is the:

1. "network" that "stores" "**video programs**"?
2. "stor[age]" of "**video programs**"?
3. "predetermined time period"?

Applicant respectfully submits that the relied upon portions of Tillman do not teach or suggest, expressly or inherently, "the replay portal stores a plurality of video programs for a predetermined period of time to permit customers to view selected programs upon demand".

Accordingly, it is respectfully submitted that the rejection of claim 1 is unsupported by Tillman and should be withdrawn. Also, the rejection of claims 2-4, 6, and 9, each ultimately depending from independent claim 1, is unsupported by Tillman and also should be withdrawn.

D. Claim 2

Inter alia, claim 2 recites, "said video program is a live event that is stored for a **predetermined period of time** to permit a user to time shift viewing of said video program upon demand". Tillman does not teach or suggest, expressly or inherently, "said video program is a live event that is stored for a **predetermined period of time** to permit a user to time shift viewing of said video program upon demand".

The present Office Action erroneously asserts, at Page 3, that:

[a]s for claim 2, Tillman discloses that the video programming is a live programming of events that is stored for a predetermined period of time to permit a user to time shift of selective programs upon demand (column 3, lines 32-35 and

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41-45).

Yet the first relied upon portion of Tillman recites, at column 3, lines 32-35, “[i]t allows the user of a client system to see additional detail of a live digital video stream, as well as slow motion instant replay video, on demand.” The second relied upon portion of Tillman recites, at column 3, lines 41-45, “[t]he digital video stream may represent live or prerecorded content. FIG. 1 is a diagram of a system 10 for real-time, multiple source, digital video streaming over a communications network according to one embodiment of the present invention.

Applicant respectfully asks where either of these relied upon portions of Tillman teaches or suggests, expressly or inherently, “a live programming of events that is stored for a **predetermined period of time**”. Applicant respectfully submits that the claimed subject matter is not in the relied upon portions of Tillman. Accordingly, it is respectfully submitted that the rejection of claim 2 is unsupported by Tillman and should be withdrawn.

E. Claim 6

Inter alia, claim 6 recites, “said backbone network is a **high capacity backbone network** adapted to permit the replay portal to receive programs from live sources and from broadcasts for retransmission to customers”. Tillman does not teach or suggest, expressly or inherently, “said backbone network is a **high capacity backbone network** adapted to permit the replay portal to receive programs from live sources and from broadcasts for retransmission to customers”.

The present Office Action asserts, at Page 3, that:

[c]onsidering claim 6, Tillman discloses that the replay portal is permitted to receive programs from live sources and broadcasts (18, 20 and 22 in figure 1) for retransmission to customers (column 3, line 38 - column 4, line 8).

Thus, the present Office Action fails to even mention “a **high capacity backbone network**”.

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Applicant respectfully asks where the relied upon portions of Tillman teach or suggest, expressly or inherently, “said backbone network is a high capacity backbone network adapted to permit the replay portal to receive programs from live sources and from broadcasts for retransmission to customers”? Applicant respectfully submits that the claimed subject matter is not in the relied upon portions of Tillman. Accordingly, it is respectfully submitted that the rejection of claim 6 is unsupported by Tillman and should be withdrawn.

F. Claim 9

Inter alia, claim 9 recites, “said access network includes a data sink for receiving network programs and live programs from a provider, a storage unit for receiving said network programs and live programs from the data sink and a data source for providing downstream viewing of selected programming.” Tillman does not teach or suggest, expressly or inherently, “said access network includes a data sink for receiving network programs and live programs from a provider, a storage unit for receiving said network programs and live programs from the data sink and a data source for providing downstream viewing of selected programming.”

The present Office Action erroneously asserts, at Page 3, that:

[a]s for claim 9, Tillman discloses a network includes a data sink (**inherent** since it does receive programs from a source) for receiving network programs and live programs from a provider, a storage unit (40 in figure 2) for receiving said network programs and live programs from the data sink and a data source for providing downstream viewing of selected programming.

As an initial matter, Applicant respectfully requests a reference indicating that “the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art”.

As stated above, in section I.A, the phrase “**data sink**” has been defined in the specification. Applicant respectfully submits that the relied upon portions of Tillman do not

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teach or suggest, expressly or inherently, a “data sink” as defined in the specification.

Accordingly, it is respectfully submitted that the rejection of claim 9 is unsupported by Tillman and should be withdrawn.

II. The Obviousness Rejections

Each of claims 5, 7, 8, and 10-42 was rejected under 35 U.S.C. § 103(a) as being unpatentable over various combinations of Tillman (U.S. Patent No. 6,496,980), Norin (U.S. Patent No. 5,794,253), Ovadia (U.S. Patent No. 6,400,720), Kenner (U.S. Patent No. 5,956,716), and/or LaJoie (U.S. Patent No. 5,850,218). These rejections are respectfully traversed.

A. Prima Facie Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness. “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.” See MPEP 2143. Moreover, the USPTO “has the initial duty of supplying the factual basis for its rejection.” *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (C.C.P.A. 1967).

“The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” MPEP 2142. The requirements for fulfilling this burden are explicit and straightforward.

“[T]he examiner **must show reasons** that the skilled artisan, **confronted with the same**

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problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed."

(emphasis added). *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998).

To show these reasons, "[p]articular findings must be made". *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). Such factual findings must be supported by "concrete evidence in the record". *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

Moreover, a showing of combinability must be "clear and particular". *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 161(Fed. Cir. 1999). That strong showing is needed because, "**obviousness requires proof 'that the skilled artisan . . . would select the elements from the cited prior art references for combination in the manner claimed'".** *In re Scott E. Johnston*, No. 05-1321, Fed. Cir.; 30 January 2006; 2006 US App. LEXIS 2282 (quotation omitted) (emphasis added).

Consequently, an Office Action must clearly and objectively prove that the applied references are "reasonably pertinent to the **particular** problem with which the invention was involved". See *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 664, 57 USPQ2d 1161, 1166 (Fed. Cir. 2000); *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1535, 218 USPQ 871, 876 (Fed. Cir. 1983); and *Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 881-83, 886, 45 USPQ2d 1977, 1981-82, 1985 (Fed. Cir. 1998).

In addition, "[t]he patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness." *In re Sang-Su Lee*, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Thus, the Office Action must clearly and objectively prove some "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

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“select the references”;

“select the teachings of [the] separate references”; and

“combine [those teachings] in the way that would produce the claimed invention”.

In re Scott E. Johnston, No. 05-1321, Fed. Cir.; 30 January 2006; 2006 US App. LEXIS 2282 (internal citations omitted). See also *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998) (discussing the “the test of whether it would have been obvious to select **specific** teachings and combine them as did the applicant”) (emphasis added); and *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985) (“When prior art references require selective combination... to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself.”). “The absence of . . . a suggestion to combine is dispositive in an obviousness determination.” *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997).

Further, this obviousness standard applies regardless of whether the Office Action relies upon modifying or combining purported teachings.

Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious modification of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the **desirability** of the modification.... It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

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In re Fritch, 972 F.2d 1260, 23 USPQ 2d 1780, 1783-1784 (Fed. Cir. 1992) (citing *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991); *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985); and *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) (internal quotations omitted) (emphasis added)).

Therefore, the Office Action also must clearly and objectively prove that the “prior art suggested the **desirability**” of that modification or combination. See also *Akamai Techs. v. Cable & Wireless Internet Servs.*, 344 F.3d 1186, 68 USPQ 2d 1186 (Fed. Cir. 2003) (“[w]hen determining the patentability of a claimed invention which combines two known elements, the question is whether there is something in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the combination.”) (emphasis added).

B. Claim 5

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, “a replay portal directly connected to a backbone network and directly connected to an access network”. The applied portions of the remaining references do not overcome the deficiencies of Tillman.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 5 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

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Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Regarding combining Tillman with Norin, the present Office Action, at Pages 4-5, merely asserts “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Tillman's system to include recording over an expired program to provide a revised selection, as taught by Norin, **for the benefit of saving space**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 5.

C. Claim 7

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, “a replay portal directly connected to a backbone network and directly connected to an access network”. The applied portions of the remaining references do not overcome the deficiencies of Tillman.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 7 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of

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making the **combination**.” Regarding combining Tillman with Ovadia, the present Office Action, at Page 5, merely asserts “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Tillman's system to include broadcasts as one of the program sources, as taught by Ovadia, **for the benefit of providing multiple programs to the customer**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 7.

D. Claim 8

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, “a replay portal directly connected to a backbone network and directly connected to an access network”. The applied portions of the remaining references do not overcome the deficiencies of Tillman.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 8 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of

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obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 8.

E. Claim 10

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, "a replay portal directly connected to a backbone network and directly connected to an access network". The applied portions of the remaining references do not overcome the deficiencies of Tillman.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 10 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Regarding combining Tillman with Kenner, the present Office Action, at Page 5, merely asserts "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Tillman's system to include a storage manager unit, as taught by Kenner, for the benefit of maintaining the data stored in its unit (column 29, lines 59-67)." Yet this relied upon portion of Kenner merely recites:

[e]ach IM, including the PIM 64, also performs its own maintenance on the clip database and the data stored on its extended SRUs 66. Periodically, the PIM 64

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can check to determine if any of the clips in the clip database have expired, or if any of the clips have not been accessed within a specified time period (e.g. one hour, one day, one week, or one month). If either is the case, the PIM 64 can invoke its storage management logic to delete the clips from the appropriate SRUs 66.

Where does this relied upon passage provide any evidence whatsoever of “the **desirability**, and thus the obviousness, of making the **combination**”? Applicant respectfully submits that the relied upon passage has no relevance to “the **desirability**, and thus the obviousness, of making the **combination**”.

Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 10.

F. Claim 11

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, “a replay portal directly connected to a backbone network and directly connected to an access network”. The applied portions of the remaining references do not overcome the deficiencies of Tillman.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 11 is respectfully requested.

In addition, *inter alia*, claim 11 recites, yet the applied portions of Kenner fail to teach or suggest, expressly or inherently, “said storage manager is operative connected to a data sink for receiving data from upstream and writing the data to the store for a particular customer while making the data available for immediate delivery to a customer”. Applicant respectfully asks where the applied portions of Kenner teach or suggest a “**data sink**” as defined in the

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specification? Applicant respectfully submits that Kenner does not teach or suggest a “data sink”. None of the applied portions of the remaining relied upon references overcome the deficiencies of Kenner. Consequently, reconsideration and withdrawal of the rejection of claim 11 is respectfully requested.

Further, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 11.

G. Claim 12

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, “a replay portal directly connected to a backbone network and directly connected to an access network”. The applied portions of the remaining references do not overcome the deficiencies of Tillman.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 12 is respectfully requested.

In addition, *inter alia*, claim 12 recites, yet the applied portions of Kenner fail to teach or suggest, expressly or inherently, “a media manager for managing the selection of a particular

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program by a customer, said media manager including a backend frame format means for determining an encapsulation of media frames in **real transport protocol**". Applicant respectfully asks where the applied portions of Kenner teach or suggest a "encapsulation of media frames in **real transport protocol**"? Applicant respectfully submits that Kenner does not even mention the phrase "**real transport protocol**". None of the applied portions of the remaining relied upon references overcome the deficiencies of Kenner. Consequently, reconsideration and withdrawal of the rejection of claim 12 is respectfully requested.

Further, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 12.

H. Claim 13

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, "a replay portal directly connected to a backbone network and directly connected to an access network". The applied portions of the remaining references do not overcome the deficiencies of Tillman.

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Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 13 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Regarding combining Tillman with LaJoie, the present Office Action, at Page 8, merely asserts “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Tillman's system to include that a customer is enabled to pause, reverse and forward the viewing of the video program, as taught by LaJoie, **for the benefit of interactivity**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 13.

I. Claim 14

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, “a replay portal directly connected to a backbone network and directly connected to an access network”. The applied portions of the remaining references do not overcome the deficiencies of Tillman.

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Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 14 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 14.

J. Claim 15

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, “a replay portal directly connected to a backbone network and directly connected to an access network”. The applied portions of the remaining references do not overcome the deficiencies of Tillman.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 15 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

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1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 15.

K. Claim 16

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, "a replay portal directly connected to a backbone network and directly connected to an access network". The applied portions of the remaining references do not overcome the deficiencies of Tillman.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 16 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Thus, the present Office Action fails to present the required **proof** of

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obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 16.

L. Claim 17

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, “a replay portal directly connected to a backbone network and directly connected to an access network”. The applied portions of the remaining references do not overcome the deficiencies of Tillman.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 17 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 17.

M. Claim 18

As demonstrated above, in section I.C, claim 1 recites, yet the applied portions of Tillman fail to teach or suggest, “a replay portal directly connected to a backbone network and

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directly connected to an access network”. The applied portions of the remaining references do not overcome the deficiencies of Tillman.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection claim 18 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 18.

N. Claim 19

Inter alia, claim 19, from which claims each of claims 20-33 depends, recites a “replay portal directly connected to a backbone network and directly connected to an access network”. Tillman does not teach or suggest, expressly or inherently, a “replay portal directly connected to a backbone network and directly connected to an access network”.

In addition, *inter alia*, claim 19, from which claims each of claims 20-33 depend, recites, “the replay portal stores said plurality of **video programs for a predetermined period of time** to permit customers to view, still pause, reverse and fast forward a viewing of said video program upon demand”. Tillman does not teach or suggest, expressly or inherently, “the replay portal

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stores said plurality of **video programs for a predetermined period of time** to permit customers to view, still pause, reverse and fast forward a viewing of said video program upon demand”.

The present Office Action erroneously asserts that:

[c]onsidering claim 19, Tillman discloses ... wherein the replay portal stores [sic] plurality of **video programs for a predetermined period of time** to permit customers to view selected programs upon demand (column 13, line 61 - column 14, line 4).

Yet the relied upon portion of Tillman recites, at column 13, line 61 - column 14, line 4:

[t]he elements of system 400 perform their conventional functions well-known in the art. In particular, data storage device 422 may be used to provide long-term storage for the **executable instructions** and data structures for embodiments of methods of providing high quality replay on demand for streaming digital video in accordance with the present invention, whereas memory 406 is used to store on a shorter term basis the **executable instructions** of embodiments of the methods for providing high quality replay on demand for streaming digital video in accordance with the present invention during execution by processor 402.

Applicant respectfully asks, in this relied upon passage, where is the:

1. “network” that “stores” “**video programs**”?
2. “stor[age]” of “**video programs**”?
3. “predetermined time period”?

Applicant respectfully submits that the relied upon portions of Tillman do not teach or suggest, expressly or inherently, “the replay portal stores a plurality of video programs for a predetermined period of time to permit customers to view selected programs upon demand”.

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Accordingly, it is respectfully submitted that the rejection of claim 19 is unsupported by Tillman and should be withdrawn. Also, the rejection of claims 20-33, each ultimately depending from independent claim 1, is unsupported by Tillman and also should be withdrawn.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Regarding combining Tillman with LaJoie, the present Office Action, at Page 9, merely asserts “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Tillman's system to include that a customer is enabled to pause, reverse and forward the viewing of the video program, as taught by LaJoie, **for the benefit of interactivity**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 19.

O. Claim 20

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 20 is respectfully requested.

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In addition, *inter alia*, claim 20 recites, "said video program is a live event that is stored for a predetermined period of time to permit a user to time shift viewing of said video program upon demand". Tillman does not teach or suggest, expressly or inherently, "said video program is a live event that is stored for a **predetermined period of time** to permit a user to time shift viewing of said video program upon demand".

The present Office Action erroneously asserts, at Page 10, that:

[a]s for claim 20, Tillman and LaJoie meet the claimed limitations. In particular, Tillman discloses that the video programming is a live programming of events that is stored for a predetermined period of time to permit a user to time shift of selective programs upon demand (column 3, lines 32-35 and 41-45).

Yet the first relied upon portion of Tillman recites, at column 3, lines 32-35, "[i]t allows the user of a client system to see additional detail of a live digital video stream, as well as slow motion instant replay video, on demand." The second relied upon portion of Tillman recites, at column 3, lines 41-45, "[t]he digital video stream may represent live or prerecorded content. FIG. 1 is a diagram of a system 10 for real-time, multiple source, digital video streaming over a communications network according to one embodiment of the present invention.

Applicant respectfully asks where either of these relied upon portions of Tillman teach or suggest, expressly or inherently, "said video program is a live event that is stored for a **predetermined period of time** to permit a user to time shift viewing of said video program upon demand". Applicant respectfully submits that the claimed subject matter is not in the relied upon portions of Tillman. Accordingly, it is respectfully submitted that the rejection of claim 20 is unsupported by Tillman and should be withdrawn.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";

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2. "select the teachings of [the] separate references"; or

3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 20.

P. Claim 21

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 21 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";

2. "select the teachings of [the] separate references"; or

3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 21.

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Q. Claim 22

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 22 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Regarding combining Tillman with LaJoie and Norin, the present Office Action, at Page 12, merely asserts "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Tillman and LaJoie to include recording over an expired program to provide a revised selection, as taught by Norin, **for the benefit of saving space.**"

Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 22.

R. Claim 23

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

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Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 23 is respectfully requested.

In addition, *inter alia*, claim 23 recites, "said backbone network is a high capacity backbone network adapted to permit the replay portal to receive programs from live sources and from broadcasts for retransmission to customers". Tillman does not teach or suggest, expressly or inherently, "said backbone network is a **high capacity backbone network** adapted to permit the replay portal to receive programs from live sources and from broadcasts for retransmission to customers".

The present Office Action asserts, at Page 10, that:

[r]egarding claim 23, Tillman and LaJoie meet the claimed limitations. In particular, Tillman discloses that the replay portal is permitted to receive programs from live sources and broadcasts (18, 20 and 22 in figure 1) for retransmission to customers (column 3, line 38 - column 4, line 8).

Thus, the present Office Action fails to even mention "**a high capacity backbone network**".

Applicant respectfully asks where the relied upon portions of Tillman teach or suggest, expressly or inherently, "said backbone network is a high capacity backbone network adapted to permit the replay portal to receive programs from live sources and from broadcasts for retransmission to customers"? Applicant respectfully submits that the claimed subject matter is not in the relied upon portions of Tillman. Accordingly, it is respectfully submitted that the rejection of claim 23 is unsupported by Tillman and should be withdrawn.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or

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3. "combine [those teachings] in the way that would produce the claimed invention". Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 23.

S. Claim 24

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 24 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Regarding combining Tillman with LaJoie and Ovadia, the present Office Action, at Page 13, merely asserts "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Tillman and LaJoie to include broadcasts as one of the program sources, as taught by Ovadia, **for the benefit of providing multiple programs to the customer.**"

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Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 24.

T. Claim 25

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 25 is respectfully requested.

In addition, *inter alia*, claim 25 recites, "said access network includes a **data sink** for receiving network programs and live programs from a provider, a storage unit for receiving said network programs and live programs from the data sink and a data source for providing downstream viewing of selected programming". Tillman does not teach or suggest, expressly or inherently, "said access network includes a **data sink** for receiving network programs and live programs from a provider, a storage unit for receiving said network programs and live programs from the data sink and a data source for providing downstream viewing of selected programming".

The present Office Action erroneously asserts, at Page 10, that:

[c]onsidering claim 25, Tillman and LaJoie meet the claimed limitations. In particular, Tillman discloses a network includes a data sink (**inherent** since it does receive programs from a source) for receiving network programs and live programs from a provider, a storage unit (40 in figure 2) for receiving said network programs and live programs from the data sink and a data source for providing downstream viewing of selected programming.

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As an initial matter, Applicant respectfully requests a reference indicating that “the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art”.

As stated above, in section I.A, the phrase “**data sink**” has been defined in the specification. Applicant respectfully submits that the relied upon portions of Tillman do not teach or suggest, expressly or inherently, a “data sink” as defined in the specification. Accordingly, it is respectfully submitted that the rejection of claim 25 is unsupported by Tillman and should be withdrawn.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 25.

U. Claim 26

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 26 is respectfully requested.

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In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Regarding combining Tillman with LaJoie and Kenner, the present Office Action, at Page 14, merely asserts “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Tillman and LaJoie to include a storage manager unit, as taught by Kenner, for the benefit of maintaining the data stored in its unit (column 29, lines 59-67).”

Yet this relied upon portion of Kenner merely recites:

[e]ach IM, including the PIM 64, also performs its own maintenance on the clip database and the data stored on its extended SRUs 66. Periodically, the PIM 64 can check to determine if any of the clips in the clip database have expired, or if any of the clips have not been accessed within a specified time period (e.g. one hour, one day, one week, or one month). If either is the case, the PIM 64 can invoke its storage management logic to delete the clips from the appropriate SRUs 66.

Where does this relied upon passage provide any evidence whatsoever of “the **desirability**, and thus the obviousness, of making the **combination**”? Applicant respectfully submits that the relied upon passage has no relevance to “the **desirability**, and thus the obviousness, of making the **combination**”.

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Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 26.

V. Claim 27

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 27.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 20 is respectfully requested.

In addition, *inter alia*, claim 27 recites, yet the applied portions of Kenner fail to teach or suggest, expressly or inherently, "said storage manager is operative connected to a **data sink** for receiving data from upstream and writing the data to the store for a particular customer while making the data available for immediate delivery to a customer". Applicant respectfully asks where the applied portions of Kenner teach or suggest a "**data sink**" as defined in the specification? Applicant respectfully submits that Kenner does not teach or suggest a "**data sink**". None of the applied portions of the remaining relied upon references overcome the deficiencies of Kenner. Consequently, reconsideration and withdrawal of the rejection of claim 27 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

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Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 27.

W. Claim 28

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 28 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 28.

X. Claim 29

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As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 29 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 29.

Y. Claim 30

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 30 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

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1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 30.

Z. Claim 31

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 31 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** "in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**." Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 31.

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AA. Claim 32

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 32 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 32.

BB. Claim 33

As demonstrated above, in section II.N, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 19.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 33 is respectfully requested.

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In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 33.

CC. Claim 34

Inter alia, claim 34, from which claims each of claims 35-42 depends, recites a “replay portal directly connected to a backbone network and directly connected to an access network”. Tillman does not teach or suggest, expressly or inherently, a “replay portal directly connected to a backbone network and directly connected to an access network”.

Accordingly, it is respectfully submitted that the rejection of claim 34 is unsupported by Tillman and should be withdrawn. Also, the rejection of claims 35-42, each ultimately depending from independent claim 1, is unsupported by Tillman and also should be withdrawn.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

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Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Regarding combining Tillman with LaJoie, the present Office Action, at Page 16, merely asserts “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Tillman's system to include that a customer is enabled to pause, reverse and forward the viewing of the video program, as taught by LaJoie, **for the benefit of interactivity**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 34.

DD. Claim 35

As demonstrated above, in section II.CC, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 34.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 35 is respectfully requested.

In addition, *inter alia*, claim 35 recites, “said video program is a live program events that is stored for a predetermined period of time to permit said customer to time shift viewing of selective programs upon demand”. Tillman does not teach or suggest, expressly or inherently, “said video program is a live program events that is stored **for a predetermined period of time** to permit said customer to time shift viewing of selective programs upon demand”.

The present Office Action erroneously asserts, at Page 16, that:

[a]s for claim 35, Tillman and LaJoie meet the claimed limitations. In particular, Tillman discloses that the video programming is a live programming of events that is stored for a predetermined period of time to permit a user to time shift of selective programs upon demand (column 3, lines 32-35 and 41-45).

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Yet the first relied upon portion of Tillman recites, at column 3, lines 32-35, “[i]t allows the user of a client system to see additional detail of a live digital video stream, as well as slow motion instant replay video, on demand.” The second relied upon portion of Tillman recites, at column 3, lines 41-45, “[t]he digital video stream may represent live or prerecorded content. FIG. 1 is a diagram of a system 10 for real-time, multiple source, digital video streaming over a communications network according to one embodiment of the present invention.

Applicant respectfully asks where either of these relied upon portions of Tillman teach or suggest, expressly or inherently, “said video program is a live event that is stored for a **predetermined period of time** to permit a user to time shift viewing of said video program upon demand”. Applicant respectfully submits that the claimed subject matter is not in the relied upon portions of Tillman. Accordingly, it is respectfully submitted that the rejection of claim 35 is unsupported by Tillman and should be withdrawn.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Thus, the present Office Action fails to present the required **proof** of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 35.

EE.Claim 36

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As demonstrated above, in section II.CC, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 34.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 36 is respectfully requested.

In addition, *inter alia*, claim 36 recites, "said backbone network is a high capacity backbone network adapted to permit the customer replay portal receive programs directly from live sources and from broadcasts". Tillman does not teach or suggest, expressly or inherently, "said backbone network is **a high capacity backbone network** adapted to permit the customer replay portal receive programs directly from live sources and from broadcasts".

The present Office Action asserts, at Page 16, that:

[r]egarding claim 36, Tillman and LaJoie meet the claimed limitations. In particular, Tillman discloses that the replay portal is permitted to receive programs from live sources and broadcasts (18, 20 and 22 in figure 1) for retransmission to customers (column 3, line 38 - column 4, line 8).

Thus, the present Office Action fails to even mention "**a high capacity backbone network**".

Applicant respectfully asks where the relied upon portions of Tillman teach or suggest, expressly or inherently, "**a high capacity backbone** is provided to permit the replay portal to receive programs from live sources and from broadcasts for retransmission to customers"? Applicant respectfully submits that the claimed subject matter is not in the relied upon portions of Tillman. Accordingly, it is respectfully submitted that the rejection of claim 36 is unsupported by Tillman and should be withdrawn.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";

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2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents no proof, and indeed no evidence, of anything "in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination." Thus, the present Office Action fails to present the required proof of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 36.

FF. Claim 37

As demonstrated above, in section II.CC, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 34.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 37 is respectfully requested.

GG. Claim 38

As demonstrated above, in section II.CC, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 34.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 38 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or

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3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents no proof, and indeed no evidence, of anything "in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination." Thus, the present Office Action fails to present the required proof of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 38.

HH. Claim 39

As demonstrated above, in section II.CC, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 34.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 39 is respectfully requested.

In addition, the present Office Action presents **no proof, and** notably **no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents no proof, and indeed no evidence, of anything "in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination." Thus, the present Office Action fails to present the required proof of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 39.

II. Claim 40

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As demonstrated above, in section II.CC, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 34.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 40 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Moreover, the present Office Action presents no proof, and indeed no evidence, of anything “in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.” Thus, the present Office Action fails to present the required proof of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 40.

JJ. Claim 41

As demonstrated above, in section II.CC, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 34.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 41 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

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1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents no proof, and indeed no evidence, of anything "in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination." Thus, the present Office Action fails to present the required proof of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 41.

KK. Claim 42

As demonstrated above, in section II.CC, the present Office Action does not present a *prima facie* case of obviousness regarding independent claim 34.

Because no *prima facie* rejection of independent claim 1 has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of the rejection of claim 42 is respectfully requested.

In addition, the present Office Action presents **no proof, and notably no evidence** whatsoever, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Moreover, the present Office Action presents no proof, and indeed no evidence, of anything "in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination." Thus, the present Office Action fails to present the required proof of obviousness. Consequently, Applicant respectfully requests withdrawal of the obviousness rejection of claim 42.

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LL. Obviousness Summary

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach or suggest **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

Because no *prima facie* rejection of any independent claim has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

It is respectfully noted that because the Office Action fails to set forth sufficient facts to provide a *prima facie* basis for the rejections, any future rejection based on the applied reference will necessarily be factually based on an entirely different portion of that reference, and thus will be legally defined as a "new grounds of rejection." Consequently, any Office Action containing such rejection can not properly be made final. *See In re Wiechert*, 152 U.S.P.Q. 247, 251-52 (C.C.P.A. 1967) (defining "new ground of rejection" and requiring that "when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make a showing of unobviousness vis-a-vis such portion of the reference"), and *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (C.C.P.A. 1967) (the USPTO "has the initial duty of supplying the factual basis for its rejection").

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III. Allowable Subject Matter

A potential statement of reasons for the indication of allowable subject matter is:

“none of the reference of record, alone or in combination, teach or suggest the combination of limitations found in the independent claims. Namely, claims 1-42 are allowable because none of the references of record, alone or in combination, teach or suggest a ‘replay portal directly connected to a backbone network and directly connected to an access network’”.

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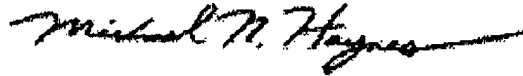
CONCLUSION

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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Date: 15 March 2006

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